

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

JOBRI, L.L.C.,)	
)	
Plaintiff and)	
Counter-)	
Defendant,)	
)	
v.)	Case No. CIV-09-296-KEW
)	
SELECT COMFORT CORPORATION,)	
)	
Defendant and)	
Counter-)	
Plaintiff.)	

OPINION AND ORDER

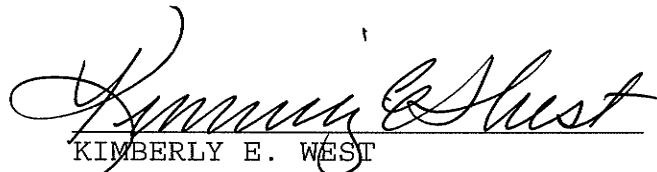
This matter comes before the Court on Plaintiff's Motion in Limine filed July 19, 2010 (Docket Entry #79). Plaintiff seeks to exclude evidence that the contract between the parties was orally modified to provide for the return of its \$700,000.00 deposit if the contract was fully performed. Defendant responds that it does not intend to introduce evidence on the modification of the agreement. It does intend to argue as a matter of law it was entitled to the return of the deposit and provides a relatively extensive argument to that end. Whether Defendant is entitled to a return of the deposit as a matter of law is outside the scope of the subject Motion.

Plaintiff also generically seeks to exclude hearsay statements. No specific statements are identified. It is impossible to rule upon this issue in the abstract until concrete

statements are given at trial. It will be incumbent upon Plaintiff's counsel to lodge the appropriate objection at the appropriate time.

IT IS THEREFORE ORDERED that Plaintiff's Motion in Limine filed July 19, 2010 (Docket Entry #79) is hereby **GRANTED**, in part, in that Defendant will not be permitted to offer evidence of the specified oral modification of the written contract between the parties. The remainder of the Motion is hereby **DENIED**.

IT IS SO ORDERED this 7th day of October, 2010.


KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE